



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

February 21, 2019

Brian Ball
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Julie Keegan
Association: Carlyle City Residences Homeowners' Association
File Number: 2019-01802

The Office of the Common Interest Community Ombudsman has been designated to review final adverse decisions and determine if they may be in conflict with laws or regulations governing common interest communities. Such determination is within the sole discretion of the Office of the Common Interest Community Ombudsman and not subject to further review.

Complaint

The Complainant submitted a complaint to the Association dated November 8, 2018. The Association provided a response to the Complainant dated December 18, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated January 7, 2019 and received January 10, 2019.

Determination

The Common Interest Community Ombudsman (CICO), as designee of the Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18VAC 48-70-120) The process of making such a determination begins with receipt of a NFAD that has been submitted to this office in accordance with §55-530(F) (Code of Virginia) and the Common Interest Community Ombudsman Regulations (Regulations). A NFAD results from an association complaint submitted through an association complaint procedure. The association complaint must be submitted in accordance with the applicable association complaint procedure and, as very specifically set forth in the Regulations, "shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.

Under the Regulations, applicable laws and regulations pertain solely to common interest community laws and regulations. Any complaint that does not concern common interest community laws or regulations is not appropriate for submission through the

association complaint procedure. If such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

The Complainant alleged that the Association violated §55-79.74:1 of the Condominium Act by failing to provide requested books and records. Among other things, this statute speaks to the right of an association member to obtain access to the books and records of the association. The Complainant stated that the Association withheld information from the owners and that she had requested information from the Association but had not received it. The Complainant did not include any supporting documentation with the NFAD that demonstrated whether the documents had been requested in accordance with the requirements of the Condominium Act. The Complainant also wrote that meeting minutes had not been distributed, "CCR" meeting agendas and minutes had not been distributed, meeting dates, agendas, minutes, budget and annual reports for the Council had not been provided, parking enforcement was not conducted, and the property manager was not responding within three days.

The Complainant included a cover letter with the NFAD that contained additional information that was not part of the original complaint. As is always the case, such information cannot be considered as part of the NFAD since it was not part of the original complaint and the Association has not had an opportunity to respond to the new information and allegations.

The Association responded by writing that several months of board meeting minutes had been provided to the Complainant, that draft minutes were not yet prepared and will be provided when they are ready, that the annual meeting minutes will be presented at the next meeting of the owners, that the agendas will be available at the same time, per §55-510.1(B)¹, that they are available to the board members and that the Complainant can contact the Manager and come to the Manager's office to review them. The Association also noted that a complaint regarding parking enforcement is not appropriate for the complaint process. Finally, the Association wrote that if the Complainant complies with the requirements for requesting books and records as set forth in §55-510² of the Property Owners' Association Act, the Association "will respond as required by providing books and records of the Association which exist and are responsive to the request."

There are a several disconnects in this NFAD that make it difficult to provide a Determination. The Complainant alleged violations of the Condominium Act while the Association responded with references to the Property Owners' Association Act. The Association is registered with the Common Interest Community Board as a property owners' association, so the correct references would be to the Property Owners'

¹ Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of an association's board of directors or subcommittee or other committee thereof for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee thereof.

² Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

Association Act. The Condominium Act is inapplicable in the present situation and therefore no violation of it can be found.

While the Complainant alleged that the Association failed to provide her the documents she had requested, there was no evidence showing that she had requested the documents in a manner that fully complied with the applicable law. For this office to determine if the Association failed to respond to a request for books and records, we would need to know that the request itself was in full accordance with the applicable law. No Determination can be provided since there is no way of knowing, based on the documents provided, if the original requests for books and records were done in a way that fully comports with common interest community law. The allegations related to parking enforcement and to the response time of the manager are not ones that fall under the jurisdiction of this office and therefore no determination can be provided regarding them.

Required Actions

Nothing is required of the Association at this time.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Carlyle City Residences Homeowners' Association